# In the Supreme Court of the United States

OCTOBER TERM, 1972

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ROBBINS TIRE & RUBBER COMPANY, INC., PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINIONS BELOW

The district court did not issue an opinion. The opinion of the court of appeals (Pet. App. 1a–7a) is reported at 462 F. 2d 684.

### JURISDICTION

The judgment of the court of appeals was entered on June 13, 1972 (Pet. App. 1a). A timely petition for rehearing was denied on August 24, 1972 (Pet. App. 10a). The petition for a writ of certiorari was filed on November 15, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).



492-238—72

## QUESTION PRESENTED

Whether under the terms of a 1964 compromise settlement of petitioner's unpaid tax liabilities, petitioner waived its right to a refund of any overpayment otherwise due it for the calendar year in which the offer was accepted.

## STATEMENT

Over a period of years from 1942 through 1963, petitioner incurred liabilities for (1) income and excess profits taxes together with penalties and interest totalling $4,722,202.44, and (2) excise taxes and related penalties and interest totalling $5,545,170.07. On March 19, 1964, petitioner filed a formal offer in compromise, based on "inability to pay," proposing to pay a total of $941,422.50 plus a specified percentage of the amount by which its annual income exceeded $25,000 during each of the succeeding nine taxable years (Pet. App. 1a–3a).

Petitioner submitted the offer on Internal Revenue Department Form 656 entitled "Offer in Compromise," paragraph 3 of which reads in pertinent part as follows (Pet. App. 3a):

> 3. In making this offer, and as a part consideration thereof, the proponent [petitioner] agrees • • • (b) that any and all amounts of money to which the proponent may be entitled under the internal revenue laws, due through overpayments of any tax or other liability, including interest and penalties, made for periods ending prior to or during the calendar year in which this offer is accepted, as are not in excess of the difference between the liability sought to be

> compromised and the amount herein offered, shall also be retained by the United States. * * *

Petitioner also stated in a letter its intention to waive and withdraw all claims for refund which had been made or could be made with respect to the taxable years covered by the offer and specifically setting forth a number of such existing claims to be withdrawn. On May 1, 1964, the Commissioner accepted petitioner's offer (Pet. App. 2a–3a).

Subsequently, petitioner contested in the Tax Court a deficiency asserted against it for its fiscal year ending September 30, 1964. The Tax Court determined that petitioner had made an overpayment of $139,189.60 for that year. Since the Tax Court has no jurisdiction to order a refund, petitioner brought the instant proceeding in the United States District Court for the Northern District of Alabama, seeking a refund of that overpayment. The government urged that, under the terms of paragraph 3(b) of the offer in compromise, the petitioner had waived its right to refund of any overpayment otherwise due it for the calendar year in which the settlement was made (Pet. App. 3a–4a).

The district court, after holding that the language of paragraph 3(b) was ambiguous, allowed the petitioner to introduce parol evidence of its intentions concerning the offer, and submitted to a jury the question whether petitioner was barred by the settlement agreement from receiving a refund for 1964. The jury found in petitioner's favor (Pet. App 4a).

On appeal, the court of appeals held that the construction of paragraph 3(b) urged by petitioner was unreasonable and that the district court had erred in treating the agreement as ambiguous and in submitting the issue of its interpretation to the jury. The cause was remanded with directions to enter judgment for the United States (Pet. App 6a–7a).

## ARGUMENT

The decision below is correct. There is no conflict or other reason for further review.

1. In May 1964, petitioner entered into a compromise agreement with the Commissioner of Internal Revenue whereby more than $10 million of petitioner's unpaid tax liabilities was abated. The basis for this settlement was petitioner's claimed inability to pay. As part of the consideration to the government for abatement of its unpaid tax liabilities, petitioner agreed that any and all overpayments "made for periods ending prior to or during the calendar year in which this offer is accepted," would be retained by the United States. Thus petitioner waived its rights to any refund of overpayments for taxable periods ending up to and during the calendar year 1964.[1] The

[1] Petitioner urges that the use of "or" in paragraph 3(b) sets forth two distinct options whereby the United States might retain only (1) all overpayments made for periods ending prior to the year in which the offer was accepted *or* (2) any overpayment made for a period ending during the calendar year in which the offer was accepted, but not both. This construction was correctly determined by the court of appeals to be unreasonable (Pet. App. 6a). The use of the word "or" in the context of paragraph 3(b) indicates simply and clearly that

overpayment petitioner now seeks to have refunded is for its taxable year ending September 30, 1964. Since petitioner's offer in compromise was accepted (and also made) during 1964, this overpayment is one which the United States is entitled to retain under paragraph 3(b) of the settlement agreement.

2. The decision below works no injustice on taxpayers who execute compromise agreements with the government (Pet. 8). A taxpayer in its settlement offer may renounce any right to claim a refund for specified periods. See, *e.g., Cooper Agency* v. *United States,* 301 F. Supp. 871 (D.S.C.), affirmed, 422 F. 2d 1331 (C.A. 4); *Walker* v. *Alamo Foods Co.,* 16 F. 2d 694 (C.A. 5). Nor is the government given a windfall. The amount which the United States can retain under paragraph 3(b) is limited by the amount of tax liabilities which were abated under the settlement.

3. Finally, the law regarding the interpretation of written contracts is clear. The intention of the parties to a written contract must be derived from the language of the contract. *Jurs* v. *Commissioner,* 147 F. 2d 805 (C.A. 9); *Hawkeye Commercial Men's Ass'n* v. *Christy,* 294 Fed. 208 (C.A. 8). See, generally, Williston, *Contracts* (3d ed.) § 610. Where the terms of the contract are unambiguous, the determination of its

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overpayments made for any period ending prior to the next preceding calendar year could be retained by the government. Use of the word "and" in this context would have been technically incorrect and confusing, for a taxable period could not end both prior to *and* during a calendar year; a taxable period may only end either prior to *or* during a particular calendar year.

meaning is a question of law and should be decided without resort to extrinsic evidence.[2] See, *e.g.*, *United States* v. *Waterman Steamship Corp.*, 397 F. 2d 577 (C.A. 5).

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1973.

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[2] Petitioner's letter of March 12, 1964, on which it relies (Pet. 4), merely specified the claims known at that time which would be withdrawn pursuant to the terms of the settlement. An overpayment made during the year in which the offer was accepted could not have been so specified, because both the calendar year in which the offer would be accepted and the existence of any claim for overpayment for the then current taxable year could not then be known. Moreover, nothing in the letter repudiated that part of the agreement giving the government the right to retain any overpayment for the taxable year ending during the calendar year in which the offer was accepted.

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